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(Wilson, Fourkas, Kamprath, and Berriz)

8
9 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA
10 **SAN FRANCISCO DIVISION**

11 **In re:**

12 **PG&E CORPORATION**

13 -and-

14 **PACIFIC GAS AND ELECTRIC**
COMPANY,

15 **Debtors.**

- 16 ☐ Affects PG&E Corporation
17 ☐ Affects Pacific Gas and Electric Company
18 ☒ Affects both Debtors

19 **All papers shall be filed in the Lead Case,*
20 *No. 19-30088 (DM)*

Case No. 19-30088 (Jointly Administered)

Chapter 11

RESPONSE TO OBJECTION TO DEBTORS'
MOTION PURSUANT TO 11 U.S.C. §§ 363(b)
AND 105(a) AND FED. R. BANKR. P. 6004
AND 9019 FOR ENTRY OF AN ORDER (I)
AUTHORIZING THE DEBTORS TO
SETTLE THE CLAIMS OF TUBBS
PREFERENCE CLAIMANTS AND (II)
GRANTING RELATED RELIEF; AND
DEBTORS' MOTION PURSUANT TO 11
U.S.C. §§ 105(a) AND 107(b) AND FED. R.
BANKR. P. 9018 FOR ENTRY OF AN
ORDER AUTHORIZING
REDACTION AND SEALING OF
CONFIDENTIAL INFORMATION FROM
TUBBS SETTLEMENT DOCUMENTS
[Dkt. No. 5459]

23 Date: January 29, 2020
24 Time: 10:00 a.m. (Pacific Time)
25 Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
26 San Francisco, CA 94102

1 **I. INTRODUCTION**

2 The objection should be denied because: (1) it is procedurally untimely; (2) all of the
3 concerns raised relate to clearly enumerated terms in the RSA; (3) the terms of the RSA at issue
4 were fully disclosed to the TCC (including the two TCC members represented by Attorneys
5 Scarpulla, Hallisey and Balabanian) and the TCC unanimously approved it; (4) the terms of the
6 RSA were filed publicly and approved by this Court; (5) there has been no change in facts or law
7 to warrant re-evaluation of the RSA; (6) confidentiality of each individual Tubbs Settlement is
8 important to the financial privacy of each victim who personally settled their case; (7) PG&E has
9 required, as part of its business practice and judgment that all settlement agreements with fire
10 victims be confidential dating back to the San Bruno Gas Explosion; and (8) the settlement
11 amounts for Tubbs Preference Plaintiffs are simply “allowed claims” in the Bankruptcy, and shall
12 be paid in accordance with the terms and procedures created by the Trustee of any future Fire
13 Victim Trust. (See Declaration of Frank Pitre in Support ¶¶ 2 – 4).

16 **II. RESPONSE TO OBJECTION**

17 **A. The Objection is Untimely.**

18 Attorneys Scarpulla, Hallisey and Balabanian had two opportunities over the course of a
19 month to lodge an objection to the RSA and the Tubbs Settlement Agreements, but failed to do so.
20 Instead, five days after the Court-approved deadline to object to the Tubbs Settlement
21 Agreements, attorneys Scarpulla, Hallisey and Balabanian raise issue with clearly enumerated
22 terms of the Court-approved RSA. This delay and dissonance can only be explained by the major
23 filing in this case that pre-dated the filing of their objection by mere hours: PG&E and the Ad Hoc
24 Committee of Bondholders filed an RSA whereby the bondholders agreed to withdraw their plan.
25

26 **B. The Objection is Misinformed.**

27 The objectors argue that “the [confidentiality] terms prevent the TCC and fire victims from
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1 having an opportunity to evaluate how the settlements will impact the funds available in the
2 eventual fire victims trust.”

3 However, section 2(h) of the RSA states: “upon entry of the RSA Approval Order, the
4 Debtors shall (i) have entered into one or more settlement agreements settling all of the Tubbs
5 Cases (the “Tubbs Settlements”), which shall (A) allow such claims subject to payment solely
6 from the Fire Victims Trust (as defined in the Term Sheet and provided in the Amended Plan) ...
7 .” The Term Sheet defines “Fire Victims Trust” as “one or more trusts established on the
8 Effective Date to administer, process, settle, resolve, satisfy, and pay Fire Victim Claims.” (pg. 3
9 of Term Sheet). Further, according to term 6.6, “On or before the Effective Date, the Fire Victim
10 Trust shall be established. In accordance with the Plan, the Confirmation Order, the Fire Victim
11 Trust Agreement and the Fire Victim Claims Resolution Procedures, the Fire Victim Trust shall
12 administer, process, settle, resolve, liquidate, satisfy, and pay all Fire Victim Claims.” (pg. 7 of
13 Term Sheet [emphasis added]).

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15 In summary, the settlement amounts for Tubbs Preference Plaintiffs are simply “allowed
16 claims” in the Bankruptcy, and shall be paid in accordance with the terms and procedures created
17 by the Trustee of any future Fire Victim Trust.
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19 **C. The Objection is a Misplaced Attack on the Court-Approved RSA**

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21 **1. The RSA Required the Debtors to Enter Settlement Discussions with the**
22 **Tubbs Preference Plaintiffs.**

23 Page four of the RSA, section 2(a) states: “the Debtors shall...(vi) promptly enter into
24 discussions for the settlement of all the preference cases arising out of the Tubbs fire pending in
25 the Superior Court for the State of California.” After the RSA was approved by the TCC and
26 Consenting Fire Professionals, the Debtors began settlement negotiations with the Tubbs
27 Preference Plaintiffs and those negotiations were successful.
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1 2. The RSA Requires All Tubbs Settlements be Confidential.

2 Page five of the RSA, section 2(h) states: “upon entry of the RSA Approval Order, the
3 Debtors shall (i) have entered into one or more settlement agreements settling all of the Tubbs
4 Cases (the “Tubbs Settlements”), which shall ... (C) be confidential and sealed.”

5 3. The RSA Bars Use of the Tubbs Settlements as Data Points

6 The objectors also argue that “the confidentiality provision prevents objecting Camp fire
7 claimants and other fire victims from accessing critical data points that reflect PG&E's evaluation
8 of claims”. But section 2(h) of the RSA bans use of the Tubbs Settlements as data points in any
9 proceeding: “upon entry of the RSA Approval Order, the Debtors shall (i) have entered into one or
10 more settlement agreements settling all of the Tubbs Cases (the “Tubbs Settlements”), which shall
11 ... (D) not be admissible or introduced into evidence for any purpose in any proceeding, including
12 without limitation the Estimation Matters or in any other case or proceeding in or related to the
13 Chapter 11 Cases”

14 4. The RSA Directed the Debtors to Settle with the Tubbs Preference Plaintiffs

15 Finally, the objectors argue that “the confidentiality provision prevents the objecting Camp
16 fire claimants and other fire victims from evaluating the propriety of the settlements, particularly
17 since they were reached on the eve of trial and were effectively a prerequisite to the RSA”. The
18 TCC approved the RSA before settlement negotiations even began related to the Tubbs Preference
19 cases, and the RSA clearly demanded that the Tubbs Preference cases be settled upon entry of the
20 RSA Approval Order. Section 2(h) of the RSA states “upon entry of the RSA Approval Order, the
21 Debtors shall (i) have entered into one or more settlement agreements settling all of the Tubbs
22 Cases (the “Tubbs Settlements”)”

23 The fact the Tubbs cases settled, as opposed to proceeding to trial, should not be seized
24 upon to create a sinister motive behind the confidentiality provision. Confidentiality provisions are
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1 standard, and they serve to not only protect the financial privacy of victims, but also are required
2 by PG&E and have always been, dating back to the San Bruno Gas Explosion in 2010. (See
3 Declaration of Frank Pitre in Support ¶ 3). Each of the Tubbs Settlements was negotiated on
4 behalf of individual victims, and there is not good cause to invade their contractual and privacy
5 rights, especially when those rights were clearly defined and approved by the TCC and this Court.
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10 DATED: January 24, 2020

Respectfully submitted,

11 **COTCHETT, PITRE & McCARTHY, LLP**

12
13 By: /s/ Frank M. Pitre

Frank. M. Pitre

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15 *Attorneys for Tubbs Preference Plaintiffs and*
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17 *Armando J. Berriz, Carmen T. Berriz, Arielle*
18 *Lysacek, Luis Ocon, Monica Ocon, Elizabeth*
19 *Fourkas, Alissa Fourkas, Pete*
20 *Fourkas, Donald Louis Kamprath, Ruth*
21 *Kamprath, Christina Wilson, Gregory*
22 *Wilson, the Fourkas Family Trust, and the*
23 *Donald L. Kamprath and Ruth Johnson*
24 *Kamprath Revocable Trust*
25
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